

## **DETAILED ACTION**

Applicants' arguments in, filed March 22, 2010, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Oath/Declaration***

It is acknowledged that Applicant has filed a Response to Decision attesting to the accuracy of the translation by including a statement that the English language part of the Declaration and Power of Attorney is an accurate translation of the Japanese language part thereof.

### ***Drawings***

The drawings were received on March 22, 2010. These drawings are accepted.

## ***Claims***

### **Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejection)**

1) Claims 1, 4 and 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over in Melman (US 2002/0156130) in view of Oriza (JP 2000-239136).

### **Applicant's Arguments**

Applicant has amended the claims to recite that the extract obtained from *Perilla frutescens* var. *crispa flutescen purpurea* comprises rosmarinic acid. Applicant further incorporates the arguments submitted October 30, 2009. These arguments are not persuasive.

### **Examiner's Response**

Applicant has asserted that the results have a synergistic effect because better results were seen when glycolic acid and an aqueous extract of *Perilla frutescen* var. *crispa flutescen purpurea* comprising polyphenol, specifically rosmarinic acid, were combined in comparison with the results obtained by each of them separately. Although this appears to be the case, the results do not encompass the claims as recited presently. As previously asserted, the instant claims are not commensurate in scope

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with the submitted results. Although the claims recite that the extract and glycolic acid are in an effective amount for the removal of tartar, neither the claims nor the instant specification define what an "effective amount" encompasses. Further, the limitation of "effective amount" does not limit the claims to amounts that lead to the "synergistic effect". The limitation also encompasses those amounts wherein an additive effect occurs and a "synergistic effect" does not. Claims drawn to (unexpectedly) synergistic combinations of known ingredients must be factually supported by data commensurate in scope with the claims. (See, In re Kollman, 201 USPQ 193 (C.C.P.A. 1979). (The court affirming a 103 rejection of a claim containing the word "synergistic", because the claims were not commensurate in scope with the showing of unexpected results, other than at 1:1 ratio for certain specific combination). Applicant's results only support the specific extract obtained by Meiji Seika Kaisha, Ltd., (which identifies a rosmarinic content of 3.3% or more), in a 5% aqueous solution and a glycolic acid concentration of 10% of an aqueous solution, which appears to also be supported by the instant specification.

In regards to the arguments filed October 30, 2009, see Examiner's response mailed February 5, 2010.

2) Claims 3, 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Melman (US 2002/0156130) in view of Oriza (JP 2000-239136) as applied to claims 1 and 4 and 5, in further view of Zhu (WO 01/17494) and Tagashira et al. (JP409295944).

Applicant's Arguments

See Applicant's Arguments above in regard to Melman in view of Oriza. Applicant refers to the arguments filed October 30, 2009.

Examiner's Response

See Examiner's Response above. Also see Examiner's response mailed February 5, 2010 in regard to the arguments pertaining to the instant rejection.

Claims 1 and 3-7 are rejected.

No claims are allowed.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1612

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